

82-1946

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JUN 1 1983

ALEXANDER L. STEVAS,

CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

JAMES L. OYSTER,

Appellant,

vs.

ELIZABETH J. OYSTER.

Appellee.

ON APPEAL FROM THE

CIRCUIT COURT OF

ARLINGTON COUNTY, VIRGINIA

JURISDICTIONAL STATEMENT

JAMES L. OYSTER

Stuart B. Mitchell

and Associates

803 West Broad Street

Suite 240

Falls Church, VA 22046

(703) 241-3770

Counsel for Appellant

(pro se)

QUESTION PRESENTED

1. Whether the Virginia "no fault" divorce statute, providing for divorce based solely on the grounds of separation for a specified period of time, is unconstitutional.

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OPINIONS BELOW

No opinion has been written in this case. The Order denying the motion to strike is appended hereto as Appendix A. The final judgment (Final Decree of Divorce) is appended hereto as Appendix B. The Order of the Supreme Court of Virginia denying the petition for appeal is appended hereto as Appendix C.

STATEMENT OF JURISDICTION

James L. Oyster, appellant, appeals from the Final Decree of Divorce entered by the Circuit Court of Arlington County on June 24, 1982. Appellant challenges the constitutionality of the Virginia "no fault" divorce statute. Appellant filed a timely motion to strike the bill of complaint on constitutional grounds, and filed a timely petition for appeal from the Final Decree of Divorce to the Supreme Court of Virginia; the petition for appeal was refused by the Supreme Court of Virginia on April 22, 1983. Notice of appeal was filed in the Circuit Court of Arlington County on May 9, 1983. This Court has jurisdiction of this appeal under 28 U.S.C. § 1257(2).

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The statute involved is § 20-91.9(a) of the Virginia Code (1950), as amended, which provides as follows:

§ 20-91. Grounds for divorce from bond of matrimony. -- A divorce from the bond of matrimony may be decreed:

(9)(a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. A plea of *res judicata* or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year from the commencement of such separation, the grounds for divorce shall be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

The constitutional provisions involved are the 9th amendment to the Constitution of the United States and Section 1 of the 14th amendment to the Constitution of the United States. U.S. Const. amend. IX and U.S. Const. amend. XIV. They provide the following:

Amendment IX [1791]

The enumeration in the Constitution. of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On March 31, 1981, James L. Oyster and Elizabeth J. Oyster, husband and wife, separated pursuant to a Property, Custody, and Support Settlement Agreement. On April 2, 1982, Elizabeth J. Oyster brought a Bill of Complaint against James L. Oyster seeking a divorce solely on the ground that they had lived separate and apart for one (1) year. On April 15, 1982, Mr. Oyster filed a Motion to Strike, alleging that Section 20-91(9)(a) of the Virginia Code (1950), as amended, upon which Mrs. Oyster relied as the ground for divorce, is unconstitutional. Oral argument was held on the motion on June 10, 1982, and the motion to strike was denied without written opinion. Mr. Oyster then filed an Answer, stating that he wished to continue to live with his wife and with the two minor children of the

parties' marriage. A Final Decree of Divorce was entered on June 24, 1982, and appellant's exception was duly noted. A timely petition for appeal was filed with the Supreme Court of Virginia. The sole basis for the appeal was the constitutional issue, i.e., that the "no fault" divorce statute violates the Constitution of the United States. The Supreme Court of Virginia refused the petition for appeal with the notation "no reversible error."

Appellant has raised the constitutional question presented for review here at every stage of the proceedings below, and the courts have refused to render an opinion on the substantial constitutional question presented.

THE QUESTION IS SUBSTANTIAL

This case presents a substantial question of a state's power to enact legislation which effectively destroys society's most sacred institution--the institution of marriage. This question has never been directly addressed by this Court.

The most fundamental unit of society is the family, and the integrity of the family unit is guaranteed by the United States Constitution. Indeed, this right is more than the right of the individuals. It is the right of society itself. Marriage is a social contract. It is a relationship between man and woman, but even more,

a relationship between the married couple and society. Therefore, much more is at stake here than the rights of the individuals who are married. Society and the most fundamental relationship between man and his Creator are involved, for, through marriage, society is renewed by God's creation of new human beings.

In America, the societal contract above referred to has its roots in the Judeo-Christian ethic, but it is a basic societal principle throughout the world regardless of religious belief. As set forth in Christian scriptures in the Gospel of Matthew, Chapter 19, verses 4-7:

Have you not read that he who made them from the beginning made them male and female, and said, "For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh"? So they are no longer two but one flesh. What therefore God has joined together, let no man put asunder.

The Supreme Court of the United States has held that marriage is one of the "basic civil rights of man." Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). It held in Loving v. Virginia, 388 U.S. 1, 12 (1967), that the right to be married "has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."

The Court has characterized marriage as "the most important relation in life." Maynard v. Hill, 125 U.S. 190, 205 (1888); Zablocki v. Redhail, 434 U.S. 374, 384 (1978). In dicta included in Granville-Smith v. Granville-Smith, 349 U.S. 1, 11 (1955), at n. 17, it was stated that "Divorce is also a rightful subject of legislation but a law giving any married person who might apply to the court a right to divorce without cause would be invalid."

The societal right to preservation of the institution of marriage, as guaranteed by the Constitution of the United States, was clearly enunciated in Griswold v. Connecticut, 381 U.S. 479 (1965). As Justice Goldberg stated therein:

The entire fabric of the constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected. (381 U.S. 479 at 495).

Thus the institution of marriage is protected by the Bill of Rights through the penumbra of rights expressed in the 9th amendment.

That the Bill of Rights can be applied to societal interests as well as the rights of individuals was recognized in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) in which the Supreme Court applied the

first amendment to protect the rights of viewers, i.e., society. This case stands for the proposition that when the rights of individuals and society come into conflict, the rights of society are paramount.

It is recognized, of course, that society is diverse. Its interests are not always clear. However, in the case of marriage, there is no question but that society has a most profound interest in the preservation of the institution of marriage. Indeed, as the basic unit of society, the family is the cornerstone of the nation and its preservation is the most fundamental right of any people. This case is not directed against the laws of divorce as a whole. It is specifically directed at "no fault" divorce, the logical extension of which is the extinction of the institution of marriage. If it is constitutional for a state to pass a law permitting divorce merely by virtue of separation for 12 months, it is likewise constitutional to do so by virtue of a 6-month separation, a 3-month separation, a 1-month separation, a 1-day separation, and a 1-hour separation. Prostitution need not be legalized. Simply fly to Las Vegas for tonight's "quickie" marriage and divorce.

This case clearly presents a substantial federal question of the utmost importance. Regardless of the merits, it is imperative that this Court rule on this vital issue. It is totally unconscionable that a man can

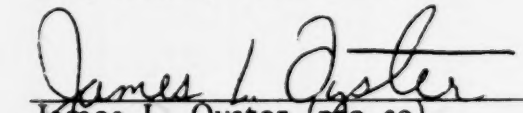
be deprived of his family without even so much as an opinion from the courts relative to this critical issue and with no cause being advanced for such action other than separation for an arbitrary period of time. If liberty is to be preserved in a free society, such arbitrary action cannot be tolerated. The Court is implored to give heed to the Prophet Isaiah:

Go through, go through the gates; prepare ye the way of the people; cast up, cast up the highway; gather out the stones; lift up a standard for the people.

CONCLUSION

For the reasons stated, appellant respectfully submits that this Court should note probable jurisdiction of this appeal, and either summarily reverse the judgment below or set this case for oral argument.

Respectfully submitted,


James L. Oyster (pro se)
Stuart B. Mitchell and
Associates

Suite 240
803 West Broad Street
Falls Church, Virginia 22046
(703) 241-3770

A-1

VIRGINIA :

IN THE CIRCUIT COURT
OF ARLINGTON COUNTY

ELIZABETH J. OYSTER)	
)	
Complainant)	
)	
vs.)	IN CHANCERY
)	NO. 32829
JAMES L. OYSTER)	
)	
Defendant)	ORDER

THIS CAUSE came on to be heard on the 10th day of June, 1982, upon Defendant's Motion to Dismiss; and was argued by counsel.

IT APPEARING TO THE COURT that said Motion should be denied; it is therefore

ADJUDGED, ORDERED and DECREED that the Motion to Dismiss be, and the same hereby is denied; and, it is further

ORDERED that the Defendant file his responsible pleadings on or before June 23, 1982.

AND this cause is continued.

ENTERED this 21st day of June, 1982.

/s/

William L. Winston, Judge

/s/

BETTY A. THOMPSON
Counsel for Complainant
1800 North Kent Street, Suite 1001
Arlington, Virginia 22209

SEEN AND EXCEPTED TO:

/s/

L. LEE BEAN
Counsel for Defendant
P.O. Box 749
Arlington, Virginia 22216

VIRGINIA :

IN THE CIRCUIT COURT
OF ARLINGTON COUNTY

ELIZABETH J. OYSTER)	
)	
Complainant)	
)	
vs.)	IN CHANCERY
)	NO. 32829
JAMES L. OYSTER)	
)	<u>FINAL DECREE</u>
Defendant)	<u>OF DIVORCE</u>

THIS CAUSE came on to be heard upon the Bill of Complaint; upon Defendant's Answer to said Bill of Complaint; upon the Decretal Orders entered herein; upon the testimony of Complainant and her witness duly taken in support of her Bill of Complaint before Denman T. Rucker, Commissioner in Chancery, reduced to writing and filed herein; upon the Report of said Commissioner; and, was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court, independently of the admissions of either party in the pleadings or otherwise, that said parties were lawfully married on the 22nd day of December, 1973, in Alexandria, Virginia; that two children were born of the aforesaid marriage, namely, James L. Oyster, Jr. (born September 10, 1979) and Elizabeth J. Oyster, II (born September 10, 1979); that

both parties hereto are members of the Caucasian race, over the age of eighteen years and neither is a member of the Armed Forces of the United States; that Complainant was, at the time of the institution of this suit, a bona fide resident of and domiciled in Arlington County, Virginia, and had resided and had been domiciled in the State of Virginia for more than six months immediately preceding the institution of this suit; that Defendant was, at the time of the institution of this suit, a bona fide resident of and domiciled in Arlington County, Virginia; that the parties last cohabited in Arlington County, Virginia; that the parties separated on March 31, 1981, at which time it was the intention of the Complainant to terminate the marriage; that the parties have continued to live separate and apart since March 31, 1981, a period of more than one year next preceding the institution of this suit; and that there has been no reconciliation between the parties.

IT FURTHER APPEARING TO THE COURT that the parties hereto have entered into an Agreement dated March 31, 1981, and an Addendum dated June 30, 1981, settling their personal and property rights, as well as the custody, and support and maintenance of the minor children of the parties, which Agreements are filed herein.

UPON CONSIDERATION OF ALL OF WHICH the Court is of opinion that the said Elizabeth J. Oyster is entitled to the relief prayed for in her Bill of Complaint; it is therefore

ADJUDGED, ORDERED and DECREED that the said Elizabeth J. Oyster be, and she is hereby divorced from the bond of matrimony from James L. Oyster, which was created by the aforesaid marriage, on the ground of having lived separate and apart without any cohabitation and without interruption for more than one year, to-wit, ever since March 31, 1981; and that said marriage be, and the same is hereby dissolved; and, it is further

ADJUDGED, ORDERED and DECREED that the care and custody of James L. Oyster, Jr., and Elizabeth J. Oyster, II, the minor children of the parties hereto, be, and the same is hereby awarded to the Complainant, Elizabeth J. Oyster, subject to the right of the Defendant, James L. Oyster, to liberal and reasonable visitation with said minor children, all as more fully set forth in the Agreement of the parties dated March 31, 1981, and the Addendum thereto, dated June 30, 1981; and it is further

ADJUDGED, ORDERED and DECREED that the Defendant, James L. Oyster, do pay to the Complainant for the maintenance and support of the

minor children of the parties, the sum of \$500.00 per month, payable on the fifth day of each and every month, beginning on the 5th day of July, 1981, and to continue thereafter in accordance with, and as provided in, that certain Agreement dated March 31, 1981, and Addendum thereto, dated June 30, 1981; and, it is further

ADJUDGED, ORDERED and DECREED that the Agreement dated March 31, 1981, and the Addendum thereto dated June 30, 1981, executed by the parties and filed herein, be, and the same are hereby affirmed, ratified, confirmed and incorporated herein by reference pursuant to Section 20-109.1 of the 1950 Code of Virginia, as amended; and, it is further

ORDERED that the Clerk of this Court issue forthwith certified copies of this Decree to counsel for both parties.

AND this Decree is final.

ENTERED this 24th day of June, 1982.

/s/ WILLIAM L. WINSTON
JUDGE

/s/
BETTY A. THOMPSON
Counsel for Complainant
1800 North Kent Street, Suite 1001
Arlington, Virginia 22209

SEEN AND EXCEPTED TO:

/s/
L. LEE BEAN
Counsel for Defendant
P.O. Box 749
Arlington, Virginia 22210

VIRGINIA :

In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Friday the 22nd day of April, 1983.

James L. Oyster, Appellant.

against Record No. 821671
Circuit Court No. C-32829

Elizabeth J. Oyster, Appellee.

From the Circuit Court of Arlington County

Upon review of the record in this case and
consideration of the argument submitted in support of
the granting of an appeal, the court is of opinion there
is no reversible error in the judgment complained of.
Accordingly, the court refused the petition for appeal.
Code § 8.01-675.

A Copy,

Teste:

Allen L. Lucy, Clerk

By: /s/
Deputy Clerk

D-1

VIRGINIA :

IN THE CIRCUIT COURT
OF ARLINGTON COUNTY

ELIZABETH J. OYSTER)	
)	
Complainant,)	
)	
vs.)	IN CHANCERY
)	NO. 32829
JAMES L. OYSTER)	
)	
Defendant.)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that James L. Oyster hereby appeals to the Supreme Court of the United States from the judgment (Final Decree of Divorce) entered by this Court on June 24, 1982. This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/

James L. Oyster
Stuart B. Mitchell & Associates
Suite 240
803 West Broad Street
Falls Church, Virginia 22046

(703) 241-3770
May 9, 1983

CERTIFICATE OF SERVICE

This is to certify that a copy of this Notice of Appeal to the Supreme Court of the United States was forwarded, by first class, postage prepaid U.S. mail, to Betty A. Thompson, 1800 N. Kent Street, Suite 1001, Arlington, Virginia 22209, by undersigned on May 9, 1983. All parties required to be served have been served.

/s/

James L. Oyster